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In The

Supreme Court of the United States

HAROLD E. HILL, MARGARET R. and WILLIAM F. McCRIGHT, JOHN J. McQUEEN, RITA J. MOSKOWITZ, and BARBARA SANTEE,

Petitioners,

vs.

THOMAS E. KEMP (Chairman, Oklahoma Tax Commission), JERRY JOHNSON (Vice Chairman, Oklahoma Tax Commission), CONNIE IRBY (Secretary-Member, Oklahoma Tax Commission), and BRAD HENRY (Governor),

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Tenth Circuit

OKLAHOMA GOVERNOR BRAD HENRY'S RESPONSE TO PETITION FOR WRIT OF CERTIORARI

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PARTIES TO THE PROCEEDING

Petitioners are Harold E. Hill, Margaret R. and William F. McCright, John J. McQueen, Rita J. Moskowitz, and Barbara Santee, all plaintiff-appellants in the proceedings below.

Respondents/Cross-Petitioners are Thomas E. Kemp, Jerry Johnson, Connie Irby (respectively, the Chairman, Vice-Chairman and Secretary-Member of Oklahoma Tax Commission), and Brad Henry (Governor of the State of Oklahoma), all defendants-appellees in the proceedings below sued in their official capacities.

Respondents/Cross-Petitioners, herein, are joined by Howard H. Hendrick (Director of the Oklahoma Department of Human Services) as a Conditional Cross-Petitioner.

Oklahoma Religious Coalition for Reproductive Choice Education Fund, Inc. ("ORC"), a plaintiff-appellant in proceedings below, apparently does not seek further review of any of the decisions issued below with respect to its claims, which they claim are distinct and severable from petitioners' claims, however, Respondents herein seek to join them on a conditional cross-petition if this court grants Petitioners' Petition.

RULE 29.6 CORPORATE DISCLOSURE STATEMENT

No Respondent/Cross-Petitioner is a corporation. Cross-Respondent, Oklahoma Religious Coalition for Reproductive Choice Education Fund, Inc. claims to be a non-profit organization established under § 501(c)(3) of the Internal Revenue Code.

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OPINIONS BELOW

The opinion of the court of appeals is reported at 478 F.3d 1236 (10th Cir. 2007) and reproduced as Appendix A (1a-53a) in Petitioners' Petition for Writ of Certiorari. The unpublished opinion and order of the district court, No. 04-CV-0028 (N.D. Okl. August 16, 2005) is reproduced as Appendix B (54a-71a) to Petitioners' Petition for Writ of Certiorari.

JURISDICTION

The court of appeals entered judgment on March 6, 2007, and a timely-filed petition for rehearing and rehearing *en banc* was denied on April 2, 2007. (See Petitioners' Petition for Writ of Certiorari, App. C, 72a-73a). On June 14, 2007, Justice Breyer extended Petitioners' time within which to file a petition for *certiorari* to and including August 30, 2007. Pursuant to Supreme Court Rule 12(5) Respondents are filing this Response to that Petition for Certiorari and Conditional Cross-Petition within 30 days from the date this case was placed on the docket. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254.

STATUTORY PROVISIONS INVOLVED

The Tax Injunction Act, 28 U.S.C. § 1341, provides that "[t]he district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and

efficient remedy may be had in the courts of such State." Petitioners' App. D, 74a.

The challenged tax scheme, 47 O.S. §§ 1104 through 1136, is reproduced in Appendix A, to Petitioner's Petition for Writ of Certiorari.

STATEMENT OF THE CASE

Petitioners, all Oklahoma taxpayers claiming ownership in motor vehicles registered in the State of Oklahoma, filed their First Amended Complaint on August 19, 2004, complaining that Oklahoma's motor vehicle license plate statutes violate their Constitutional rights. (App. pg. 1-59). Collectively calling themselves "Motorist," they alleged in their First Amended Complaint that they "interpret the phrase 'choice in family planning' to mean a woman's freedom to choose among all available reproductive options both before and after conception." (App. pg. 6, para. 16). They further alleged:

> 17. Motorist Plaintiffs wish to express themselves in this manner because they believe a special license plate is a unique means of promoting their views about reproductive rights.
>
> 18. Motorist Plaintiffs also seek a special license plate expressing support for choice in family planning because other motorists are currently permitted to use special license plates to (*a*) express contrary views about

> reproductive rights, and (*b*) raise money for organizations promoting those contrary views. (App. pg. 6).

They brought this action pursuant to 42 U.S.C. § 1983 alleging four claims:

Claim One, alleges Oklahoma's statutes, violate their First and Fourteenth Amendment rights because they are "presumptively unconstitutional" in that it grants both "the Oklahoma Legislature and Governor unbridled discretion and lacks viewpoint neutral standards for determining which Oklahoma motorist will be permitted access to a State-created speech forum" and that "every application of the Statutory Scheme creates an impermissible risk that viewpoint discrimination will lead to suppression of protected expression." (App. pg. 53);

Claim Two, alleges the statutes violate their First and Fourteenth Amendment rights "because the Oklahoma Legislature engaged in viewpoint discrimination when it authorized the expression of only certain views about reproductive rights in a State-created speech forum" and that "[t]he Statutory Scheme is not narrowly drawn to achieve a compelling or any other governmental interest justifying the Oklahoma Legislature's failure to amend [the statutes] to allow the [Oklahoma Tax Commission] to issue Family Planning Plates." (App. pg. 54);

Claim Three, alleges the statutes violate the Motorists' Due Process protection accorded by the Fourteenth Amendment because they "condition access of

Oklahoma motorists to a State-created speech forum on a statutory amendment by the Oklahoma Legislature and Governor authorizing the desired self-expression" again claiming the statutes are not narrowly drawn to achieve a compelling governmental interest, and that "it does not adequately notify Oklahoma motorists of what, if any, additional self-expression would be permitted or prohibited in a State-created speech forum." (App. pg. 54-55);

Claim Four, alleges the statutes violate the Equal Protection Clause of the Fourteenth Amendment "because it allows for, and in fact has resulted in, impermissible viewpoint discrimination among otherwise similarly-situated Oklahoma motorists in permitting access to a State-created speech forum" and that the statutes are not narrowly drawn to achieve a compelling or any other governmental interest justifying a distinction between allowing certain Oklahoma motorists to express themselves on special license plates and refusing to allow other Oklahoma motorists to do the same." (App. pg. 55-56).

The Motorists requested the district court grant them declaratory and injunctive relief. (App. pg. 57-58).

Petitioners were joined in their lawsuit by an organization called Oklahoma Religious Coalition for Reproductive Choice Education Fund, Inc. ("ORC"), a non-profit organization established under § 501(c)(3) of the Internal Revenue Code. (App. pg. 6-8). They have not asked this Court for Certiorari review

because the Tenth Circuit remanded their claims (i.e., Claims Five and Six) back to the district court for further determination. (Petitioners' App. pg. 36a-53a). Respondent/Cross-Petitioners join them in this Appeal on Conditional Cross-Petition (filed separately) asking this Court to review the Tenth Circuit's decision regarding ORC's claims.

ORC claims to be "a statewide coalition of Christian, Jewish, and other religious organizations supporting choice in family planning, regardless of income, culture, race, class, gender or ethnic origin." (App. pg. 7, para. 22). Like the Motorists, ORC alleged they "interpret the phrase 'choice in family planning' to mean a woman's freedom to choose, according to her own faith, traditions or religious and moral beliefs, among all available reproductive options both before and after conception." (App. pg. 7, para. 23). ORC claims it "provides various services to assist pregnant women who wish to engage in choice in family planning." (App. pg. 7, para. 24). They also claim to "engage in various activities to express support for choice in family planning," and that they "would like to apply for funding pursuant to 47 O.S. § 1104.6 to (a) create a program that would provide direct support to pregnant women who have decided that adoption is the appropriate option given their circumstances, and (b) support counseling and associated training about adoption as a family planning option." (App. pg. 8, para. 28). ORC alleges under:

Claim Five, that Oklahoma's tax funding part of the state license plate scheme "violates the First and Fourteenth Amendments . . . by impermissibly denying [them] the ability to apply for and receive money from the Choose Life Fund solely on the basis of [their] involvement and association – through other funding sources – with abortion activities." (App. pg. 56).

Claim Six, alleges that the funding statute "violates [their] Equal Protection" rights "because it allows for, and in fact has resulted in, impermissible discrimination among otherwise similarly-situated non-profit organizations regarding their eligibility for disbursements from the Choose Life Fund." (App. pg. 57).

ORC also asked the Court for declaratory and injunctive relief. (App. pg. 57-58).

All of the Defendants moved to dismiss the First Amended Complaint on a variety of grounds, including, lack of venue, Eleventh Amendment immunity, lack of ripeness, lack of standing, failure to state claims upon which relief could be granted, and the Tax Injunction Act. On August 16, 2005, the district court issued an Opinion and Order dismissing the First Amended Complaint holding that it lacked jurisdiction pursuant to the Tax Injunction Act [28 U.S.C. § 1341] to decide Plaintiffs' First Amended Complaint. (Petitioners App. B). Plaintiffs then appealed to the Tenth Circuit.

In the interim, between the time when the district court rendered its judgment and the time before

the Tenth Circuit entered its decision, the Oklahoma Legislature (with the Governor's approval), enacted 47 O.S. § 1135.7 which now allows any motorist (including Petitioners) the opportunity to express any viewpoint on a special license plate under certain conditions and to fund initiatives that support their viewpoint (possibly including abortion rights). (Petitioners App. A, pgs. 136a-139a). This fact alone, may render Petitioners' claims moot.

The Tenth Circuit's Decision

The Tenth Circuit affirmed the district court's decision regarding the Motorists' claims – one through four, but remanded ORC's claims five and six to the district court for further determination, ruling the district court improperly applied the *Ex parte Young* doctrine pursuant to this Court's decision in *Verizon Maryland, Inc. v. Public Service Commission of Maryland*, 535 U.S. 635 (2002). (Petitioners' App. A).

PETITIONERS AND ORC's CLAIMS

Both the Motorists and ORC are challenging the same statutes. The Motorists are asking for the same access to what they categorize as a state created forum in order to express their viewpoint on the State's license plates. While ORC is challenging the funding part of that statute, demanding the federal courts to force the state to expend state tax money for a program the State has decided is not in the best

interests of its citizens. Both claims raise serious *federalism* concerns. Because both are challenging the same statutory scheme Respondents are asking this Court to accept its Cross-Petition conditioned on this Court's acceptance of Petitioners' Writ for Certiorari.

RESPONSE TO PETITION FOR CERTIORARI

Petitioners claim this Court should accept Certiorari review because the price paid by motorists for Oklahoma license plates is not really a tax, but instead a contractual debt, and because the Tax Injunction Act should not deprive a federal district court of jurisdiction when the claimants are not challenging the tax itself, but instead challenging the statute on free speech grounds.

1. Tax vs. Debt and the Tax Injunction Act

Petitioners want this Court to define for the state what it considers a tax. While Respondents understand that it is this Court's obligation to interpret Congress' intent in enacting the Tax Injunction Act, and not what the State itself classifies as a tax, Respondents believe the State's intent should not be wholly discounted.

The purpose of taxation is to provide funds or property with which to promote the general welfare and protection of its citizens. *Burnet v. Sanford &*

Brooks Co., 282 U.S. 359, 51 S.Ct. 150 (1931). Petitioners' argument that the revenue produced by Oklahoma's vehicle license plate statutes is not really a "tax" but instead a "contractual debt" ignores the purpose for which the revenue is gathered. The revenue appropriated from those assessments fund a myriad of state programs including school districts, State Transportation, counties, cities and towns, Oklahoma's Law Enforcement Retirement Fund, and Oklahoma's Wildlife Conservation Fund. See, 47 O.S. § 1104. Even the two appropriations that the Petitioners are complaining about in this case serve the general welfare and protection of its citizens. Both the $20 apportioned for the Choose Life Assistance Program pursuant to 47 O.S. § 1104.6(B), and the $25 appropriated for the Investing in the Stronger Oklahoma Families Act pursuant to 47 O.S. § 1135.5(B)(22) and 10 O.S. § 22.2(B) are valid state appropriations that "promote the general welfare and protection of its citizens." *Id.* Just because the State originally chose not to fund Petitioners' particular viewpoint programs does not invalidate those appropriations (*Rust v. Sullivan,* 500 U.S. 173, 194, 111 S.Ct. 1759, 1773, 114 L.Ed.2d 233 (1991)) or change the revenue's character. Because those funds are appropriated for valid State purposes that are generally accepted as being funded through state taxes, this Court should hold they are, in fact, taxes for the purpose of the Tax Injunction Act, and, therefore, Petitioners' constitutional challenge to that tax statute is prohibited by the Tax Injunction Act.

2. Free Speech and the Tax Injunction Act

A reading of Petitioners' First Amended Complaint seems to reveal that what the Motorists are really complaining about is not the denial of their free speech, but rather their failed attempts in lobbying the State Legislature for their particular viewpoint on the State's license plates. (See App. pg. 43, para. 111-124). Having failed in the political arena, they are now attempting to deny the state of Oklahoma its sovereign right to tax and appropriate state funds for the general welfare and protection of its citizens by asking a federal court to declare Oklahoma's tax statutes unconstitutional. If the Petitioners are asking this Court to invade the State's political arena to determine the propriety of the Legislatures' and Governor's actions in first approving only one viewpoint in the abortion/pro-life debate, but then later allowing Petitioners' viewpoint as well, but based on different criteria, then such "political question" could raise serious issues of *federalism*, because the state as a sovereign entity enjoys political autonomy and wide discretion on issues of government speech (*Johanns v. Livestock Marketing Association*, 544 U.S. 550, 125 S.Ct. 2055, (2005)), on state spending (*Diamler Chrysler Corp. v. Cuno*, ___ U.S. ___, 126 S.Ct. 1854 (2006)) and the regulation of it's citizens' health. (*Gonzales v. Oregon*, ___ U.S. ___, 126 S.Ct. 64, 163 L.Ed.2d 728 (2006)).

The state has in no way attempted to silence Petitioners from any speech related activity. They are still free to place their viewpoint on any bumper

stickers they desire. Indeed, they could paint their entire car with slogans and/or viewpoint speech if they so desired. The state is merely advocating a particular viewpoint which its current political electorate have determined to be favored. (See *Rust v. Sullivan,* 500 U.S. 173, 194, 111 S.Ct. 1759, 1773, 114 L.Ed.2d 233 (1991) ("[W]hen the government appropriates public funds to establish a program it is entitled to define the limits of that program")). The State has not forced the Petitioners to purchase the "Choose Life" or "Adoption Creates Families" license plates (*Johanns v. Livestock Marketing Association*, 544 U.S. 550, 125 S.Ct. 2055 (2005)), and there is no "speech-based restriction as its sole rationale and operative principle" in this case. *Rosenberger v. Rector and Visitors of University of Virginia,* 515 U.S. 819, 834, 115 S.Ct. 2510 (1995). The state of Oklahoma has merely advocated a particular viewpoint that happens to be contrary to Petitioners' viewpoint. *Rust v. Sullivan,* 500 U.S. 173, 194, 111 S.Ct. 1759, 1773, 114 L.Ed.2d 233 (1991) ("To hold that the Government unconstitutionally discriminates on the basis of viewpoint when it chooses to fund a program dedicated to advance certain permissible goals, because the program in advancing those goals necessarily discourages alternative goals, would render numerous Government programs constitutionally suspect."); *Johanns v. Livestock Marketing Association*, 544 U.S. 550, 125 S.Ct. 2055 (2005) ("Citizens may challenge compelled support of private speech, but have no First Amendment right not to fund government speech").

This Court has held that "[t]he Government has no constitutional duty to subsidize an activity merely because the activity is constitutionally protected and may validly choose to fund childbirth over abortion and implement that judgment by the allocation of public funds for medical services relating to childbirth but not to those relating to abortion." *Rust,* at 175, citing *Webster v. Reproductive Health Services*, 492 U.S. 490, 510, 109 S.Ct. 3040, 3052 (1989). As such, Oklahoma's Legislature and Governor in first allowing only the "Choose Life" and "Adoption Creates Families" license plates, but then (later) allowing any other license plates, including Petitioners' viewpoint on license plates based on different criteria is not unconstitutional nor unduly restrictive. The State's different criteria in fact represents a legitimate governmental interest, i.e., the increased costs associated with designing and producing new association or viewpoint license plates.

Finally, this Court has already held that there is no "special exception for taxpayers raising First Amendment claims" under the Tax Injunction Act because such "would undermine significantly Congress' primary purpose to limit drastically federal district court jurisdiction to interfere with so important a local concern as the collection of taxes." *California v. Grace Brethren Church*, 457 U.S. 393, 417, 102 S.Ct. 2498, 2512 (1982), quoting *Rosewell v. LaSalle National Bank*, 450 U.S., at 522, 101 S.Ct., at 1233. The Tax Injunction Act prevents a federal district court from not only issuing injunctions, but

also from declaring state taxing statutes unconstitutional, "because there is little practical difference between injunctive and declaratory relief." *Grace Brethren,* 457 U.S. at 408, 102 S.Ct., at 2508.

For the aforementioned reasons, this Court should deny Petitioners' Certiorari review.

CONCLUSION

This Court should deny Petitioners' Petition for Certiorari because the Tenth Circuit's decision that the Tax Injunction Act denied the district court jurisdiction to hear their claims was correct. In the event this Court does grant that Petition, then Respondents' request this Court to also grant their Cross-Petition because the Tenth Circuit's decision concerning *Ex parte Young* was not exactly correct,

and that court should have dismissed ORC's claims as well.

Respectfully submitted,

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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT
OF OKLAHOMA

HAROLD E. HILL, MARGARET R. and WILLIAM F. MCCRIGHT, JOHN J. McQUEEN, RITA J. MOSKOWITZ, BARBARA SANTEE, and OKLAHOMA RELIGIOUS COALITION FOR REPRODUCTIVE CHOICE EDUCATION FUND, INC., Plaintiffs, vs. THOMAS E. KEMP, Chairman, Oklahoma Tax Commission; JERRY JOHNSON, Vice Chairman, Oklahoma Tax Commission; CONNIE IRBY, Secretary-Member, Oklahoma Tax Commission; ROBERT BUTKIN, Treasurer, Oklahoma State Treasury; HOWARD H. HENDRICK, Director, Oklahoma Department of Human Services; BRAD HENRY, Governor of the State of Oklahoma; and W.A. DREW EDMONDSON, Attorney General of the State of Oklahoma, Defendants.	Civil Case No. 04 CV 028 EA(C) **FIRST AMENDED COMPLAINT** (Filed Aug. 19, 2004)

Plaintiffs, by and through their undersigned attorneys, bring this First Amended Complaint against the above-named defendants and their employees, agents, and successors in office, and in support thereof allege the following:

I. INTRODUCTION

1. This action is brought under 42 U.S.C. § 1983 seeking declaratory and injunctive relief for violations of rights secured by the First and Fourteenth Amendments to the United States Constitution. Specifically, plaintiffs challenge the constitutionality of certain Oklahoma statutes involving "special license plates."

2. The challenged statutes infringe plaintiffs' exercise of free speech and the protections accorded by both the Due Process and Equal Protection Clauses because those statutes: (*a*) permit viewpoint discrimination in the issuance of special license plates, a State-created forum for private speech (First through Fourth Claims for Relief); and (*b*) deny government funding to otherwise eligible recipients solely on the basis of protected speech activities (Fifth and Sixth Claims for Relief).

3. The protected speech at issue in this litigation involves plaintiffs' views about reproductive rights. Specifically, plaintiffs' injuries arise from their desire to express support for choice in family planning (*i.e.*, support for abortion as one of multiple

options available to women with unplanned pregnancies).

B [sic]. **Unconstitutional Viewpoint Discrimination**

4. Through the challenged statutes, the Oklahoma Legislature and Governor created a forum for private speech by allowing Oklahoma motorists to purchase from the State of Oklahoma certain special license plates for the display of self-expression. New special license plates – those displaying different expression than that already authorized by statute – can be issued only by legislative amendment. The standardless process by which motorists are granted access to this State-created forum creates the potential for unconstitutional viewpoint discrimination.

5. Indeed, the motorist plaintiffs in this action are already victims of viewpoint discrimination because the challenged statutes have not been amended to authorize the issuance of a special license plate displaying their desired expression – notwithstanding that Oklahoma motorists are currently permitted to, purchase two different special license plates displaying contrary expression (*i.e.*, support for adoption at the exclusion of all other reproductive options available to women with unplanned pregnancies).

C [sic]. **Unconstitutional Funding Restrictions**

6. Through the challenged statutes, the Oklahoma Legislature and Governor imposed eligibility restrictions on applications for certain funding. Specifically, the challenged statutes provide that monies from additional fees paid by Oklahoma motorists to the State of Oklahoma for the purchase of "Choose Life" special license plates will be available for disbursement only to those organizations that, among other conditions, do not express support for choice in family planning. Accordingly, this restriction impermissibly links the receipt of government benefits with recipients' protected speech activities.

II. JURISDICTION AND VENUE

7. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1331, 1343(a)(3) and 1343(a)(4).

8. Plaintiffs' claim for declaratory and injunctive relief is authorized by 28 U.S.C. §§ 2201 and 2202, by Rules 57 and 65 of the Federal Rules of Civil Procedure, and by the general legal and equitable powers of this Court.

9. Venue is appropriate in the Northern District of Oklahoma under 28 U.S.C. § 1391(b).

III. PARTIES

A. Motorist Plaintiffs

10. Plaintiff Harold E. Hill is a retired Presbyterian minister and college professor, and he is a resident of Tulsa, Oklahoma. He owns a validly-registered 1993 Chevrolet S-10 pick-up truck.

11. Plaintiffs Margaret R. McCright and William F. McCright are, respectively, a retired teacher/job placement counselor and a retired contractor/petroleum marketer. Mr. and Mrs. McCright are married and reside in Tulsa, Oklahoma. They own validly- and jointly-registered 1980 Chevrolet El Camino and 1991 Chrysler Fifth Avenue passenger cars.

12. Plaintiff John J. McQueen is a retired attorney and certified public accountant, and he is a resident of Tulsa, Oklahoma. He owns a validly-registered 1995 Lincoln Towncar passenger car.

13. Plaintiff Rita J. Moskowitz is a commercial realtor, and she is a resident of Tulsa, Oklahoma. She owns a validly-registered 1994 Chevy Cavalier passenger car.

14. Plaintiff Barbara Santee has a doctoral decree in Sociomedical Sciences and recently retired as the Executive Director of Oklahoma-NARAL Pro-Choice America, and she is a resident of Tulsa, Oklahoma. She owns a validly-registered 1990 Volvo 740GL passenger car.

15. Each of the individuals identified in ¶¶ 10 through 14 above (collectively, the "Motorist Plaintiffs") wishes to purchase and display on his or her motor vehicle a special license plate expressing a view about reproductive rights. Specifically, Motorist Plaintiffs seek a special license plate expressing support for choice in family planning.

16. Motorist Plaintiffs interpret the phrase "choice in family planning" to mean a woman's freedom to choose among all available reproductive options both before and after conception.

17. Motorist Plaintiffs wish to express themselves in this manner because they believe a special license plate is a unique means of promoting their views about reproductive rights.

18. Motorist Plaintiffs also seek a special license plate expressing support for choice in family planning because, other motorists are currently permitted to use special license plates to (*a*) express contrary views about reproductive rights, and (*b*) raise money for organizations promoting those contrary views.

19. Motorist Plaintiffs sue on their own behalf only as to the First through Fourth of the Claims for Relief set forth in ¶¶ 141 through 156 below.

B. Organizational Plaintiff

20. Plaintiff Oklahoma Religious Coalition for Reproductive Choice Education Fund, Inc. ("ORC" or

the "Organizational Plaintiff") is a non-profit organization established under § 501(c)(3) of the Internal Revenue Code.

21. ORC is located in Tulsa, Oklahoma. It was founded in 1978 as the Oklahoma affiliate of the former Religious Coalition for Abortion Rights, which is now known as the Religious Coalition for Reproductive Choice.

22. ORC is a statewide coalition of Christian, Jewish, and other religious organizations supporting choice in family planning, regardless of income, culture, race, class, gender or ethnic origin.

23. ORC interprets the phrase "choice in family planning" to mean a woman's freedom to choose, according to her own faith, traditions or religious and moral beliefs, among all available reproductive options both before and after conception.

24. ORC provides various services to assist pregnant women who wish to engage in choice in family planning. For example, ORC provides telephone counseling on all reproductive options available to women with unplanned pregnancies – including parenting, adopting, foster care and abortion. ORC accepts counseling referrals from other organizations and may also refer women to other organizations for counseling. In addition, ORC maintains a Roe Fund to help cover the costs (including child care, travel, overnight accommodations and medical care) incurred by impoverished pregnant

women who have decided that abortion is the appropriate option given their circumstances.

25. ORC does not charge women for any services rendered.

26. ORC also engages in various activities to express support for choice in family planning. For example, on at least a monthly basis, ORC members and volunteers stand as a non-confrontational and peaceful presence outside health facilities providing abortion services. ORC also sponsors periodic worship, fellowship and educational gatherings for community members who wish to express support for choice in family planning. In addition, ORC promotes the Clergy for Choice Network of the Religious Coalition for Reproductive Choice, which is a national registry of clergy of all faiths who believe that family planning encompasses a wide range of issues, including access to safe, legal and affordable adoption and abortion services.

27. ORC would like to apply for funding pursuant to 47 Okla. St. § 1104.6 to (*a*) create a program that would provide direct support to pregnant women who have decided that adoption is the appropriate option given their circumstances, and (*b*) support counseling and associated training about adoption as a family planning option.

28. ORC sues on its own behalf only as to the Fifth through Sixth Claims for Relief set forth in ¶¶ 157 through 162 below.

C. Defendants

29. Defendant Thomas E. Kemp is Chairman of the Oklahoma Tax Commission ("OTC").

30. Defendant Jerry Johnson is Vice-Chairman of the OTC.

31. Defendant Connie Irby is Secretary-Member of the OTC.

32. Together and individually, Defendants Kemp, Johnson and Irby are responsible for supervising the administration and enforcement of, among other statutes, the Oklahoma Vehicle License and Registration Act (Title 47, Chapter 74, §§ 1101 et seq., of the Oklahoma Code) (the "VLRA").

33. Together and individually, Defendants Kemp, Johnson and Irby are responsible for supervising the administration and enforcement of the Statutory Scheme challenged in this lawsuit. These responsibilities include, but are not limited to, issuing special license plates and collecting and apportioning the associated fees.

34. Defendant Robert Butkin is the Oklahoma State Treasurer ("Treasurer"). He is responsible for creating and maintaining the fund associated with the funding restrictions challenged in this lawsuit.

35. Defendant Howard H. Hendrick is the Director of the Oklahoma Department of Human Services ("DHS"). He is responsible for administering

and implementing the funding restrictions challenged in this lawsuit.

36. Brad Henry is the Governor of the State of Oklahoma. He is responsible for the faithful execution of the laws of the State of Oklahoma, including the Statutory Scheme and the funding restrictions challenged in this lawsuit.

37. W.A. Drew Edmondson is the Attorney General of the State of Oklahoma. He is responsible for the enforcement of the laws of the State of Oklahoma, including the Statutory Scheme and the funding restrictions challenged in this lawsuit.

38. Each of the individuals identified in ¶¶ 29 through 37 above, and their employees, agents, and successors in office, (collectively, the "Defendants") is sued in his or her official capacity for his or her actions taken under color of state law.

IV. OKLAHOMA'S OFFICIAL LICENSE PLATES[1]

39. Under Oklahoma law, every motor vehicle must be registered and have a government-issued license plate affixed to the rear bumper. *See generally* 47 Okla. St. § 1113.

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[1] A description of these statutory provisions is offered here – even though they are not challenged in this lawsuit – to provide context for the challenged provisions described elsewhere in the Complaint.

40. Upon information and belief, any Oklahoma motorist is permitted to affix a non-government issued replica or mock license plate to the *front* bumper of his or her motor vehicle. Replica license plates are available for purchase at various retail and government locations. For purposes of this lawsuit, any and all references to license plates mean the government-issued license plates required by law to be affixed to the *rear* bumpers of motor vehicles.

41. Any Oklahoma motorist convicted of operating a motor vehicle without a license plate will be deemed guilty of a misdemeanor and punished by a fine. *See* 47 Okla. St. § 1151(A)(5).

42. Any Oklahoma motorist convicted of altering a license plate in any manner will be deemed guilty of a misdemeanor and punished by a fine. *See* 47 Okla. St. § 1151(A)(2).

43. The OTC is required, upon the filing of an initial registration application and payment of the associated fees, to assign a unique identification number to the motor vehicle described in the application ("Vehicle ID Number"). The OTC is further required to issue the vehicle owner a certificate of registration and one license plate displaying the Vehicle ID Number (an "Official Plate"). *See* 47 Okla. St. § 1113(A)(1).

44. Upon information and belief, Vehicle ID Numbers typically consist of randomly-selected configurations of letters and/or numbers. Oklahoma motorists are also permitted to create their own

Vehicle ID Numbers by purchasing from the OTC personally-selected configurations of letters and/or numbers consisting of seven digits or less. *See* 47 Okla. St. § 1135.4; *see also* ¶ 74 below.

45. Each Oklahoma motorist's Vehicle ID Number is unique regardless of whether it was randomly-selected or personally-selected. Accordingly, no two motorists can have the same Vehicle ID Number.

46. Upon information and belief, Vehicle ID Numbers are displayed on Official Plates to facilitate the identification of motor vehicles. Vehicle identification assists the State of Oklahoma and its employees and agents in the performance of safety, traffic and law enforcement functions.

47. The Official Plate design is prescribed by statute. Official Plates have a solid white background. The top of the plate reads "Oklahoma" in black lettering, and the bottom reads "Native America" in red lettering. The center of the plate displays the same emblem featured on the Oklahoma State flag. The first three digits of the Vehicle ID Number are displayed in green and white to the left of the emblem, and the last three digits are displayed in green and white to the right of the emblem. *See* 47 Okla. St. § 1113(B)(3).

48. Photographs of Official Plates are available online at various internet websites. *See, e.g.*, <http://www.plateshack.com/y2k/Oklahoma/ok2004.jpg>; <http://www.worldlicenseplates.com>. An image of the Official Plate from one such website is attached as Exhibit A.

49. Every Oklahoma motorist is required to timely renew his or her vehicle registration. The OTC is required, upon the filing of a renewal application and payment of the associated fees, to issue the vehicle owner a decal indicating expiration of the renewal period. The decal must then be affixed to the Official Plate that was issued to the motorist upon initial registration. *See* 47 Okla. St. § 1113(A)(1).

50. The fees imposed by the VLRA, including those relating to motor vehicle registration and renewal, are payable to the OTC and thereafter become the property of the State of Oklahoma.

51. The OTC apportions all VLRA fees in fixed percentages among: (*a*) Oklahoma school districts, municipalities, and counties; (*b*) the General Revenue Fund; (*c*) the Oklahoma State Transportation Fund; (*d*) the Oklahoma Law Enforcement Retirement Fund; and (*e*) the Wildlife Conservation Fund. *See* 47 Okla. St. §§ 1104(A)-(K).

V. THE CHALLENGED STATUTES AND RELATED ALLEGATIONS

A. Special License Plates

52. Oklahoma motorists may purchase from the OTC certain government-issued special license plates that must be affixed to the rear of their motor vehicles in lieu of Official Plates.

53. Oklahoma motorists are not required by law to purchase special license plates or to affix special license plates to their motor vehicles.

54. Special license plates substantially differ in appearance from Official Plates. For example, unlike Official Plates, special license plates do not display the words "Native America," nor do they display the emblem featured on the Oklahoma State flag. In addition, the Vehicle ID Numbers displayed on special license plates may be positioned in different locations and/or be of different colors than the Vehicle lD Numbers displayed on Official Plates. Special license plates also typically differ in color from Official Plates.

55. Most importantly, special license plates display words, illustrations and other information that is not displayed on Official Plates. This information constitutes self-expression by Oklahoma motorists.

56. The self-expression displayed on special license plates (and *absent* from Official Plates) neither facilitates the identification of motor vehicles nor assists the State of Oklahoma and its employees and agents in the performance of any safety, traffic and law enforcement functions.

B. <u>The Statutory Scheme</u>

57. The Oklahoma Legislature and Governor, through 47 Okla. St. §§ 1135.1-1135.6, created a

process that authorizes the OTC to issue, upon payment by an Oklahoma motorist of an amount exceeding the amount paid for an Official Plate, any of the special license plates enumerated in §§ 1135.1-1135.6. A copy of 47 Okla. St. §§ 1135.1-1135.6 is attached as Exhibit B (*see* 2004 OK. ALS 504, §§ 10-15 at pp. 6-22, § 22 at p. 24).

58. Pursuant to the process, the OTC May issue a new special license plate (*i.e.*, one that is *not* currently enumerated in §§ 1135.1-1135.6) only after the Oklahoma Legislature, amends §§ 1135.1-1135.6 to authorize issuance of the new special license plate and the Governor signs the amendment into law (or allows it to become law without his signature by not acting upon it for five days).

59. As a result, the process requires prior approval from the Oklahoma Legislature and Governor if an Oklahoma motorist's desired special license plate – and thus the motorist's desired self-expression – is not among those already authorized for issuance by the OTC and enumerated in §§ 1135.1-1135.6.

60. For purposes of this lawsuit, the process described in ¶¶ 57 through 59 above will be referred to as the "Statutory Scheme."

61. As described in detail in ¶¶ 69 through 72 below, the Statutory Scheme currently authorizes the OTC to issue and allows Oklahoma motorists to purchase 105 different special license plates.

62. The Statutory Scheme requires the OTC to discontinue any of the special license plates authorized prior to January 1, 2004 expressing support for a cause, idea, hobby, institution or entity if fewer than 100 of any such plate are [sic] sold to Oklahoma motorists prior to January 1, 2006. With respect to special license plates authorized on or after July 1, 2004 expressing support for a cause, idea, hobby, institution or entity, the Statutory Scheme prohibits the sale of any such plate if the OTC has not received at least 100 prepaid applications within 180 days of the effective date of authorization. *See* §§ 1135.3 & 1135.5.

63. The Oklahoma Legislature prescribed the design of only 7 currently authorized special license plates. The Oklahoma Legislature delegated design of 56 special license plates to private or government entities. The Statutory Scheme is silent as to the design responsibility for the remaining 42 currently authorized special license plates.

64. The additional fees charged for special license plates under the Statutory Scheme are payable to the OTC and thereafter become the property of the State of Oklahoma.

65. The OTC is typically required to deposit at least $8 of every special license plate fee paid by Oklahoma motorists into the Oklahoma Tax Commission Reimbursement Fund (the "OTC Reimbursement Fund") to be used for administration of the VLRA. *See* §§ 1135.1(B), 1135.2(C), 1135.3(C), 1135.5(C) & 1135.6.

66. The Statutory Scheme requires the OTC to deposit prescribed portions of the remainder of special license plate fees for 26 different plates into specified funds maintained by the Treasurer. Monies from those funds may then be distributed to various private and/or government entities. With respect to the remainder of special license plate fees for 6 different plates, the OTC is required to transfer prescribed portions directly to private entities. In all other instances, the Statutory Scheme requires the remainder of each special license plate fee to be apportioned by the OTC pursuant to 47 Okla. St. § 1104 (discussed in ¶ 51 above). *See* §§ 1135.3(C), 1135.5(C) & 1135.6.

C. All Currently Authorized Self-Expression

67. Each of the currently authorized special license plates substantially differs in appearance from Official Plates and reflects one or more of the following four categories of self-expression by Oklahoma, motorists: (*a*) support for a cause, idea or hobby; (*b*) support for an institution, entity or occupation; (*c*) membership in a particular group; and (*d*) vehicle usage. These categories are described in greater detail in ¶¶ 69 through 72 below.

68. Photographs of many of the currently authorized special license plates are available online at various internet websites. *See, e.g.,* <http://www.plateshack.com/y2k/Oklahoma/oky2k.html>; <http://www.worldlicenseplates.com/usa/US_OK2X.html>.

69. *First Category Of Self Expression – Support For A Cause, Idea Or Hobby:* These special license plates allow any Oklahoma motorist to express support for a cause, idea or hobby. A listing of the names of each such plate follows below, together with the associated additional fee and the identity of the designer (where specified):

a) *§ 1135.3(B)(1)*: **Round & Square Dance** (for any person wishing to demonstrate support for round and square dancing; $15 additional fee)

b) *§ 1135.3(B)(6)*: **Balloonists** (for any person wishing to demonstrate support for hot air ballooning in Oklahoma; $15 additional fee)

c) *§ 1135.3(B)(20)*: **West Point 200th Anniversary** (for any person wishing to commemorate 200th anniversary of the founding of U.S. Military Academy at West Point; $15 additional fee; design by West Point Society of Central Oklahoma.)

d) *§ 1135.3(B)(27)*: **Electric Lineman** (for any person wishing to demonstrate support for Oklahoma's electric linemen; $15 additional fee design by Oklahoma Electric Superintendent's Association)

e) *§ 1135.3(B)(31)*: **Organ, Eye and Tissue** (for any person wishing to demonstrate support and increased awareness for organ, eye and tissue donation; $15 additional fee; design by Oklahoma Organ Donor Education and Awareness Program Advisory Council)

f) *§ 1135.5(B)(2)*: **Environmental Awareness** (for any person wishing to demonstrate support for implementing statewide general public environmental education program; $35 additional fee; design by Oklahoma Department of Environmental Quality in consultation with Oklahoma Arts Council)

g) *§ 1135.5(B)(4)*: **Wildlife Conservation** (for any person wishing to demonstrate support for Wildlife Conservation in Oklahoma; $35 additional fee; design by Oklahoma Department of Wildlife in consultation with Oklahoma Arts Council)

h) *§ 1135.5(B)(5)*: **Child Abuse Prevention** (for any person wishing to demonstrate support for prevention of child abuse; $35 additional fee; design by Oklahoma Department of Health-Office of Child Abuse Prevention and Oklahoma Committee to Prevent Child Abuse)

i) *§ 1135.5(B)(7)*: **Oklahoma History** (for any person wishing to demonstrate interest in Oklahoma history; $35 additional fee)

j) *§ 1135.5(B)(8)*: **Historic Route 66** (for any person wishing to honor historic Route 66, also known as the "Mother Road"; $35 additional fee)

k) *§ 1135.5(B)(9)*: **Heart of the Heartland** (for any person wishing to honor the victims of Oklahoma City terrorist bombing attack on April 19, 1995; $35 additional fee)

l) *§ 1135.5(B)(11)*: **Fight Breast Cancer** (for any person wishing to demonstrate support for prevention and treatment of breast cancer in Oklahoma; $35 additional fee)

m) *§ 1135.5(B)(12)*: **Crime Victims Awareness** (for any person wishing to demonstrate awareness of and support for victims of crimes; $35 additional fee design by Oklahoma Crime Victims Centre)

n) *§ 1135.5(B)(15)*: **Agricultural Awareness** (for any person wishing to demonstrate support for Department's Ag in the Classroom Education Program; $35 additional fee; design by Oklahoma Department of Agriculture in consultation with Oklahoma Arts Council)

o) *§ 1135.5(B)(16)*: **Oklahoma Statehood Centennial** (for any person wishing to commemorate centennial of Oklahoma's admission to statehood in 1907; $35 additional fee; design by Oklahoma Capitol and Centennial Commemoration Commission)

p) *§ 1135.5(B)(17)*: **Support Education** (for any person wishing to demonstrate support for education in Oklahoma; $35 additional fee; design by Oklahoma Department of Education in consultation with Oklahoma Arts Council)

q) *§ 1135.5(B)(20)*: **Urban Forestry & Beautification** (for any person wishing to demonstrate support for programs to encourage urban forestry and beautification; $35 additional fee; design by Oklahoma Department of Agriculture in consultation with certain nonprofit organizations)

r) *§ 1135.5(B)(22)*: **Adoption Creates Families** (for any person wishing to demonstrate support for pregnant women who are committed to placing their children for adoption and wishing to

provide assistance to guardians, adoptive parents and other creative families to assist in the adoption and placement of children in permanent, safe homes; $35 additional fee; design by Oklahoma Department of Human Services in consultation with Oklahoma Adoption Coalition)

s) *§ 1135.5(B)(23)*: **Choose Life** (for any person wishing to demonstrate support for organizations that encourage adoption as a positive choice for women with unplanned pregnancies; $35 additional fee; design by Choose Life, Inc.)

t) *§ 1135.5(B)(26)*: **Color Oklahoma** (for any person wishing to demonstrate support for preserving and planting wildflowers and native plants in Oklahoma and to promote Oklahoma's wildflower heritage through education; $35 additional fee)

u) *§ 1135.5(B)(28)*: **Oklahoma City Memorial Marathon** (for any person wishing to demonstrate support for the Oklahoma City Memorial Marathon; $35 additional fee; design by Oklahoma City Memorial Marathon)

v) *§ 1135.5(B)(29)*: **Oklahoma Scenic Rivers** (for any person wishing to demonstrate support for the Oklahoma Scenic Rivers; $35 additional fee)

w) *§ 1135.5(B)(30)*: **Fight Cancer** (for any person wishing to demonstrate support for the Oklahoma Central Cancer Registry; $35 additional fee)

x) *§ 1135.5(B)(31)*: **Animal Friendly** (for any person wishing to demonstrate support for controlling the overpopulation of dogs and cats

through educational and sterilization efforts; $35 additional fee; design by Veterinary Medical Association)

70. *Second Category Of Self-Expression – Support For An Institution, Entity Or Occupation*: These special license plates allow any Oklahoma motorist to express support for an institution, entity or occupation. A listing of the names of each such plate follows below, together with the associated additional fee and the identity of the designer (where specified):

a) *§ 1135.3(B)(2)*: **National Association for the Advancement of Colored People** (for any person wishing to demonstrate support for NAACP; $15 additional fee; design by NAACP)

b) *§ 1135.*[sic]*(B)(3)*: **National Rifle Association** (for any person wishing to demonstrate support for NRA; $15 additional fee; design by NRA)

c) *§ 1135.3(B)(13)*: **Civil Emergency Management** (for any person wishing to demonstrate support for state civil emergency management system; $15 additional fee; design by Civil Emergency Management)

d) *§ 1135.3(B)(14)*: **Civilian Conservation Corps** (for any person wishing to demonstrate support for the Civilian Conservation Corps; $15 additional fee; design by Civilian Conservation Corps Association)

e) *§ 1135.3(B)(17)*: **Humane Society** (for any person wishing to demonstrate support for Humane Society of the United States; $15 additional fee)

f) *§ 1135.3(B)(21)*: **Northern Cherokee Nation of the Old Louisiana Territory** (for any person wishing to demonstrate support or affinity with the Northern Cherokee Nation of the Old Louisiana Territory; $15 additional fee)

g) *§ 1135.3(B)(24)*: **Fellowship of Christian Athletes** (for members and supporters of the Fellowship of Christian Athletes; $15 additional fee; design by Fellowship of Christian Athletes)

h) *§ 1135.3(B)(25)*: **Parrothead Club** (for members and supporters of the Parrothead Club; $15 additional fee; design by Parrothead Club)

i) *§ 1135.3(B)(28)*: **Alpha Kappa Alpha** (for any person wishing to demonstrate support for Alpha Kappa Alpha Sorority; $15 additional fee; design by Oklahoma Chapter of Alpha Kappa Alpha Sorority)

j) *§ 1135.3(B)(29)*: **Kappa Alpha Psi** (for any person wishing to demonstrate support for Kappa Alpha Psi Fraternity; $15 additional fee; design by Oklahoma Chapter of Kappa Alpha Psi Fraternity Incorporated)

k) *§ 1135.3(B)(30)*: **National Pan-Hellenic Council Incorporated** (for any person wishing to demonstrate support for any of the sororities/fraternities recognized by the National Pan-Hellenic Council Incorporated; $15 additional fee; design by Oklahoma Chapter of the National Pan-Hellenic Council incorporated)

l) *§ 1135.5(B)(1)*: **University or College Supporter** (for any person wishing to demonstrate

support for any state-supported or private university or college; $35 additional fee)

m) *§ 1135.5(B)(6)*: **United States Olympic Committee Supporter** (for any person wishing to demonstrate support for USOC; $35 additional fee)

n) *§ 1135.5(B)(13)*: **Oklahoma Safe Kids Association** (for any person wishing to demonstrate support and awareness of Oklahoma Safe Kids Association; $35 additional fee; design by Oklahoma Safe Kids Association)

o) *§ 1135.5(B)(14)*: **Four-H Club** (for any person wishing to demonstrate support for Four-H Club; design by Four-H Club; $35 additional fee)

p) *§ 1135.5(B)(19)*: **Boy Scouts of America Supporter** (for any person wishing to demonstrate support for Boy Scouts of America; $35 additional fee)

q) *§ 1135.5(B)(21)*: **Oklahoma State Parks Supporter** (for any person wishing to demonstrate support for Oklahoma State Parks system; $35 additional fee; design by Oklahoma Tourism and Recreation Department)

r) *§ 1135.5(B)(24)*: **Future Farmers of America** (for any person wishing to demonstrate support for Oklahoma FFA; $35 additional fee; design by Oklahoma Future Farmers of America)

s) *§ 1135.5(B)(25)*: **Lions Club** (for any person wishing to demonstrate support for Lions Club of Oklahoma; $35 additional fee; design by Oklahoma Lions Service Foundation)

t) *§ 1135.5(B)(27)*: **Girl Scouts of America Supporter** (for any person wishing to demonstrate support for the Girl Scouts of America; $35 additional fee)

u) *§ 1135.6*: **National Association for the Stock Car Auto Racing Driver Theme** (for any person wishing to demonstrate interest in NASCAR auto racing; $40 additional fee)

71. *Third Category Of Self-Expression – Membership*: These special license plates allow any Oklahoma motorist to express his or her membership in a particular group. A listing of the names of each such plate follows below, together with the requisite eligibility criteria to purchase the plate, the associated additional fee and the identity of the designer (where specified):

a) *§ 1135.2(B)(1)*: **Prisoner of War** (for former prisoners of war or their surviving spouses; $8 additional fee)

b) *§ 1135.2(B)(2)*: **National Guard** (for active or retired members of Oklahoma National Guard; $8 additional fee)

c) *§ 1135.2(B)(3)*: **Air National Guard** (for active or retired members of Oklahoma Air National Guard; $8 additional fee)

d) *§ 1135.2(B)(4)*: **United States Armed Forces** (for active, retired, former or reserve members of U.S. Armed Forces; $8 additional fee)

e) *§ 1135.2(B)(5)*: **Congressional Medal of Honor Recipient** (for any Oklahoma resident

awarded Congressional Medal of Honor; $8 additional fee)

f) *§ 1135.2(B)(6)*: **Missing in Action** (for spouses or parents of members of U.S. Armed Forces missing in action; $8 additional fee)

g) *§ 1135.2(3)(7)*: **Purple Heart Recipient** (for any Oklahoma resident awarded Purple Heart military decoration, or spouse of such recipient; $8 additional fee)

h) *§ 1135.2(1)(8)*: **Pearl Harbor Survivor** (for any Oklahoma resident who was member of U.S. Armed Forces on Dec. 7, 1941, stationed on island of Oahu during attack, and received honorable discharge; $8 additional fee)

i) *§ 1135.2(B)(9)*: **Iwo Jima** (for any Oklahoma resident who was member of U.S. Armed Forces in February of 1945 and stationed on or in immediate vicinity of Iwo Jima; $8 additional fee design prescribed by statute)

j) *§ 1135.2(B)(10)*: **D-Day Survivor** (for any Oklahoma resident who was member of U.S. Armed Forces on June 6, 1944 and participated in Allied invasion; $8 additional fee)

k) *§ 1135.2(B)(11)*: **Killed in Action** (for spouses of members of U.S. Armed Forces killed in action; $8 additional fee)

l) *§ 1135.2(B)(12)*: **Gold Star Parents** (for parents of members of U.S. Armed Forces killed during war; $8 additional fee)

m) *§ 1135.2(B)(13)*: **Military Decoration** (for any Oklahoma resident awarded Distinguished

Service Award, Distinguished Flying Cross, Bronze Star or Silver Star military decoration; $8 additional fee)

n) *§ 1135.2(B)(14)*: **Vietnam Veterans** (for honorably discharged or present members of U.S. Armed Forces who served in Vietnam Conflict; $8 additional fee)

o) *§ 1135.2(B)(15)*: **Police Officer** (for any currently employed or retired municipal police officer; designed in consultation with state municipal police departments; $8 additional fee)

p) *§ 1135.2(B)(16)*: **World War II Veteran** (for honorably discharged former members of U.S. Armed Forces who served on federal active duty anytime from Sept. 16, 1940 to Dec. 7, 1945; $8 additional fee; design prescribed by statute)

q) *§ 1135.2(B)(17)*: **Korean War Veteran** (for honorably discharged former members of U.S. Armed Forces who served on federal active duty anytime from September 1, 1950 to April 27, 1954; $8 additional fee; design prescribed by statute)

r) *§ 1135.2(B)(18)*: **Municipal Official** (for persons elected to municipal office; design prescribed by statute; $8 additional fee)

s) *§ 1135.2(B)(19)*: **Red Cross Volunteer** (for any resident American Red Cross volunteers and staff; $8 additional fee; design prescribed by statute with assistance of Red Cross)

t) *§ 1135.2(B)(20)*: **Veterans of Foreign Wars** (for any resident member of any Veterans of

Foreign Wars organization; $8 additional fee; design by Veterans of Foreign Wars)

u) *§ 1135.2(B)(21)*: **Desert Storm** (for any honorably discharged or present member of U.S. Armed Forces who served in Persian Gulf Crisis and Desert Storm operation; $8 additional fee)

v) *§ 1135.2(B)(22)*: **Military Reserve Unit** (for any honorably discharged or present member of any U.S. Armed Forces reserve unit; $8 additional fee)

w) *§ 1135.2(B)(23)*: **Oklahoma City Bombing Victims and Survivors** (for any victim or survivor of Oklahoma City bombing attack on April 19, 1995; $8 additional fee)

x) *§ 1135.2(B)(24)*: **Civil Air Patrol** (for any member of Civil Air Patrol; design by Civil Air Patrol; $8 additional fee)

y) *§ 1135.2(B)(25)*: **Ninety-Nines** (for members of Ninety-Nines; $8 additional fee; design by Ninety-Nines)

z) *§ 1135.2(B)(26)*: **Combat Infantryman Badge** (for recipients of Combat Infantryman Badge; $8 additional fee; design prescribed by statute)

aa) *§ 1135.2(B)(27)*: **Somalia Combat Veterans** (for any honorably discharged or present member of U.S. Armed Forces who saw combat in United Nations relief effort; $8 additional fee)

bb) *§ 1135.2(B)(28)*: **Police Chaplain** (for members of International Conference of Police Chaplains; $8 additional fee; design by International Conference of Police Chaplains)

cc) *§ 1135.2(B)(29)*: **Joint Service Commendation Medal** (for any resident awarded Joint Service Commendation Medal; $8 additional fee)

dd) *§ 1135.2(B)(30)*: **Merchant Marine** (for any person who during combat was a member of the Merchant Marines; $8 additional fee; design by Oklahoma Department of Veterans Affairs)

ee) *§ 1135.2(B)(31)*: **Legislative** (for persons elected to Oklahoma legislature; $8 additional fee)

ff) *§ 1135.2(B)(32)*: **Disabled Veterans** (for disabled veterans or their surviving spouses; $8 additional fee)

gg) *§ 1135.2(B)(33)*: **United States Air Force Association** (for members of U.S. Air Force Association; $8 additional fee)

hh) *§ 1135.2(B)(34)*: **Oklahoma Military Academy Alumni** (for any resident alumnus of Oklahoma Military Academy; $8 additional fee; design by Oklahoma Military Academy)

ii) *§ 1135.2(B)(35)*: **Amateur Radio Operator** (for any person holding certain valid FCC-issued licenses; $8 additional fee)

jj) *§ 1135.2(B)(36)*: **Former Legislator** (for any person previously elected to the Oklahoma Legislature but no longer serving in that capacity; $8 additional fee)

kk) *§ 1135.2(B)(37)*: **American Legion** (for any person who is a member of the American Legion; $8 additional fee; design by American Legion)

ll) *§ 1135.2(B)(38)*: **Deputy Sheriff** (for any current or retired Oklahoma county or deputy sheriff; $8 additional fee; design by Oklahoma County Sheriff Offices)

mm) *§ 1135.3(B)(4)*: **Masonic Fraternity** (for any resident member of any Masonic Fraternity of Oklahoma; $15 additional fee; design by Masonic Fraternities of Oklahoma)

nn) *§ 1135.3(B)(5)*: **Shriner's Hospitals for Burned and Crippled Children** (for any resident member of any Shriner's Temple in Oklahoma to demonstrate support for Shriner's Hospitals for Burned and Crippled Children; $15 additional fee; design by Shriner's Temples in Oklahoma)

oo) *§ 1135.3(B)(7)*: **Order of the Eastern Star** (for any resident member of any Order of the Eastern Star; $15 additional fee; design by Order of the Eastern Star)

pp) *§ 1135.3(B)(8)*: **Knights of Columbus** (for any resident member of Knights of Columbus; $15 additional fee; design by Knights of Columbus)

qq) *§ 1135.3(B)(9)*: **Jaycees** (for members of Jaycees; $15 additional fee; design by Jaycees)

rr) *§ 1135.3(B)(10)*: **Ducks Unlimited** (for members of Ducks Unlimited; $15 additional fee; design by Ducks Unlimited)

ss) *§ 1135.3(B)(11)*: **Kiwanis International** (for members of Kiwanis International; $15 additional fee; design by Kiwanis International)

tt) *§ 1135.3(B)(12)*: **Certified Public Accountants** (for resident Certified Public Accountants;

$15 additional fee; design by Oklahoma Society of CPAs)

uu) *§ 1135.3(B)(15)*: **Rotarian License Plate** (for any resident member of Rotarian Club of Oklahoma; $15 additional fee; design by Rotarian District Governors)

vv) *§ 1135.3(B)(16)*: **Benevolent Protective Order of Elks** (for any resident member of Benevolent Protective Order of Elks; $15 additional fee; design by Benevolent Protective Order of Elks)

ww) *§ 1135.3(B)(18)*: **Oklahoma Mustang Club** (for any resident member of Oklahoma Mustang Club; $15 additional fee; design by Oklahoma Mustang Club)

xx) *§ 1135.3(B)(19)*: **American Business Clubs** (for members of American Business Clubs; $15 additional fee; design by American Business Clubs)

yy) *§ 1135.3(B)(26)*: **Oklahoma Bicycling Coalition** (for any person who is a member of the Oklahoma Bicycling Coalition; $15 additional fee; design by Oklahoma Bicycling Coalition)

zz) *§ 1135.5(B)(3)*: **Firefighter** (for any career or retired, volunteer or paid, firefighter of their surviving spouses; $15 additional fee; design prescribed by statute)

aaa) *§ 1135.5(B)(10)*: **Emergency Medical Technician** (for any emergency medical technician; $15 additional fee design by Oklahoma Association of Emergency Medical Technicians)

bbb) *1135.5(B)(18)*: **Retired Oklahoma Highway Patrol Officers** (for any retired officer of Oklahoma Highway Patrol, or their surviving spouses; $15 additional fee; design prescribed by statute)

72. *Fourth Category Of Self-Expression – Vehicle Usage*: These special license plates are available only to certain Oklahoma motorists and express how the vehicle is used. A listing of the names of each such plate follows below, together with the usage restriction, the associated additional fee and the identity of the designer (where specified):

a) *§ 1135.1(B)(1)*: **Political Subdivision** (for any vehicle owned by any Oklahoma political subdivision; $8 additional fee)

b) *§ 1135.1(B)(2)*: **Tax-Exempt or Nonprofit** (for any vehicle owned and used by tax-exempt or nonprofit organizations that provide youth programs, transport handicapped and elderly people, provide religious services, warehouse and distribute surplus foods, or provide mobile health screening services; and any vehicle primarily funded by a civil or fraternal organization with at least 100 local chapters or clubs; $8 additional fee)

c) *§ 1135.1(B)(4)* **Indian Tribal** (for any vehicle used by any Native American Indian Tribal Associations exclusively for furtherance of tribal functions; $8 additional fee)

d) *§ 1135.1(B)(6)*: **Antique or Classic** (for any vehicle 25 years or older which travels on Oklahoma highways primarily incidental to historical or exhibition purposes; $8 additional fee)

e) *§ 1135.1(B)(7)*: **Honorary Consul** (for persons who are honorary consuls authorized by the United States to perform consular duties; $8 additional fee)

73. In addition, the Statutory Scheme authorizes the OTC to issue – at no additional fee – "Physically Disabled" and "Hearing Impaired" license plates for use by eligible Oklahoma motorists in lieu of Official Plates. The process by which these two plates are issued is not challenged in this lawsuit because, among other reasons, the plates appear to be designed to serve legitimate, safety, traffic and law enforcement functions and/or do not appear to display protected speech.[2] *See* §§ 1135.1(B)(3) & 1135.1(B)(5).

As noted in ¶ 44 above, Oklahoma motorists may create their own Vehicle ID Numbers by purchasing from the OTC personally-selected configurations of letters and/or numbers consisting of seven digits or

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[2] Similarly, other provisions of the Oklahoma Code allowing for the issuance of license plates differing in appearance in any respect from Official Plates (*e.g.*, 47 Okla. St. §§ 1113(B)(4)-(6) (Oklahoma state vehicles, Highway Patrol vehicles, military vehicles); 70 Okla. St. § 1210.34 (a) (driver education training vehicles)) also are not challenged in this lawsuit because they appear to be designed to serve legitimate safety, traffic and law enforcement functions and/or do not appear to display protected speech.

less. *See* § 1135.4. Official Plates with personally selected configurations are often referred to as "personalized" or "vanity" license plates. This lawsuit does not challenge the process by which personalized or vanity plates are issued because motorists' personally-selected configurations – while typically self-expressive – do not require prior approval from the Oklahoma Legislature.

D. Currently Authorized Self-Expression On The Reproductive Rights Debate

75. The Statutory Scheme currently authorizes two different special license plates expressing views about reproductive rights. Neither one expresses support for choice in family planning.

Adoption Creates Families Plates

76. House Bill 1670 ("HB 1670") was introduced by former Oklahoma Representative Russ Roach (D) on February 5, 2001 and approved by the Oklahoma Governor on May 24, 2001. HB 1670 amended former 47 Okla. St. § 1136 to authorize the OTC's issuance of a special license plate referred to as the Respect Life – Support Adoption License Plate.

77. The Statutory Scheme was previously codified in part by former § 1136. Section 1136 was repealed and replaced by §§ 1135.1-1135.6 when House Bill 1994 ("HB 1994") was signed by the Oklahoma Governor on June 9, 2004 and became effective on July 1, 2004. HB 1994 re-named the

Respect Life – Support Adoption License Plate as the Adoption Creates Families License Plate ("Adoption Creates Families Plate"). Upon information and belief, no explanation was provided for this name change.

78. Adoption Creates Families Plate is available, upon payment of an additional $35 fee to the OTC, to any Oklahoma motorist "wishing to demonstrate support of pregnant women who are committed to placing their children for adoption and wishing to provide assistance to guardians, adoptive parents and other created families to assist in the adoption and placement of children in permanent, safe homes." § 1135.5(B)(22).

79. Section 1135.5(B)(22) provides that the Adoption Creates Families Plate would be designed in consultation with both the Oklahoma Adoption Coalition, a private non-profit organization, and the DHS.

80. Upon information and belief, the Adoption Creates Families Plate consists of a solid light yellow background. The top of the plate reads "Adoption Creates Families" in colored lettering, and the bottom reads "Oklahoma" in colored lettering. The center of the Adoption Creates Families Plate displays a realistic-looking image of a family holding hands. The first three digits of the Vehicle ID Number are displayed to the left of the image, and the last three digits are positioned to the right of the image.

81. Upon information and belief, the phrase "Adoption Creates Families" can be understood in the

context of the reproductive rights debate to express support for adoption at the exclusion of all other options available to women with unplanned pregnancies.

82. The phrase "Adoption Creates Families" and the realistic-looking image of a family holding hands displayed on the Adoption Creates Families Plate are the private speech of all Oklahoma motorists who purchase that special license plate.

Choose Life Plates

83. Upon information and belief, representatives from Choose Life, Inc. ("CLI") and/or representatives from CLI's Oklahoma affiliate ("OK-CLI") met with Oklahoma Representative Thad Balkman (R) in early March 2002. CLI is a private non-profit organization that wished to make available to Oklahoma motorists a special license plate displaying the phrase "Choose Life."

84. One purpose for the meeting between CLI, OK-CLI and Representative Balkman was to draft a bill that would amend former § 1136 (*i.e.*, before it was repealed and replaced by §§ 1135.1-135.6 [sic], *see* ¶ 77 above) to authorize a special license plate displaying the phrase "Choose Life."

85. CLI and OK-CLI believe that the phrase "Choose Life" is "a simple statement with an important message." <http://www.choose-life.org/aboutus.html>. Specifically, upon information and belief, CLI

and OK-CLI understand the phrase "Choose Life" to express support for adoption at the exclusion of all other reproductive options available to women with unplanned pregnancies.

86. Upon information and belief, Representative Balkman persuaded Senator Jim Williamson (R) in early April 2002 to revise House Bill 2278 ("HB 2278"). Prior to its revision, HB 2278 proposed an amendment to former § 1136 clarifying that the "Oklahoma Mustang Club License Plate" would be available for sale only to Mustang Club members.

87. The revisions to HB 2278 proposed by Representative Balkman included a second amendment to former § 1136 that would authorize the OTC's issuance of a special license plate known as the Choose Life License Plate ("Choose Life Plate").

88. Revised HB 2278 was approved by the Oklahoma Senate on April 24, 2002, approved by the Oklahoma House of Representatives on April 30, 2002, and approved by the Oklahoma Governor on May 6, 2002. It became effective on November 1, 2002.

89. Following the repeal of § 1136, the Choose Life Plate was codified at § 1135.5(B)(23) (*see* ¶ 77 above).

90. The Choose Life Plate is available, upon payment of an additional $35 fee to the OTC, to any Oklahoma motorist "who wishes to demonstrate support of organizations that encourage adoption as a

positive choice for women with unplanned pregnancies." § 1135.5(B)(23).

91. Section 1135.5(B)(23) provides that the Choose Life Plate would be designed by CLI.

92. The Choose Life Plate consists of a solid yellow background. The top of the plate reads "Choose Life" in red lettering, and the bottom reads "Oklahoma" in red lettering. The left side of the Choose Life Plate displays a hand-sketched illustration of two young children's smiling faces. The right side displays in blue lettering the Vehicle ID Number.

93. Photographs of the Choose Life Plate are available online at various internet websites. *See, e.g.*, <http://www.okchoose-life.org>; <http://www.plateshack.com/y2k/Oklahoma/ok2003chooselife.jpg>. An image from one such website of the Choose Life Plate is attached as Exhibit C.

94. Upon information and belief, the design selected by CLI for the Choose Life Plate is the same design that CLI and its local affiliates use for the merchandise that they market using slogans such as "Tell other drivers 'I'M FOR IT'" and "Take a Stand for Life." *See* <http://www.ecognizant.net/chooselife/show_items.tcl> (indicating that online "Choose Life Store" publicly markets and sells neckties, scarves, caps, clothing for adults, children and babies, teddy bears, tote bags, jewelry, key chains, decals, license plate frames, and replica or mock license plates). It is also the same design used by CLI and its local affiliates for the purpose of allowing motorists in other

states to express this particular view about reproductive rights.

95. Upon information and belief, OK-CLI and/or CLI independently and at their own expense promote the Choose Life Plate to Oklahoma motorists. For example, OK-CLI and/or CLI are providing churches with mail-order, applications for private distribution. Also upon information and belief, OK-CLI and/or CLI are also in the process of providing approximately 300 tag agencies located throughout the State of Oklahoma with color advertisements for the Choose Life Plate.

96. The phrase "Choose Life" and the hand-sketched illustration of two young children's smiling faces displayed on the Choose Life Plate are the private speech of all Oklahoma motorists who purchase that special license plate.

E. Choose Life Funding Restrictions

97. Section 1135.5(B)(23) prescribes apportionment by the OTC of the $35 additional fee paid by those Oklahoma motorists who purchase a Choose Life Plate. Of this amount, $20 is to be deposited into the Choose Life Assistance Program Revolving Fund (the "Choose Life Fund") for further apportionment pursuant to 47 Okla. St. § 1104.6, $8 is to be deposited into the OTC Reimbursement Fund (*see* ¶ 65

above) and $7 is to be apportioned pursuant to § 1104 (*see* ¶ 66 above).[3]

98. Section 1104.6(B) further requires that all monies deposited into the Choose Life Fund be distributed at the beginning of each fiscal year in a pro rata share to all eligible organizations.

99. The Choose Life Fund was created and is maintained by the Treasurer. *See* § 1104.6(B). The OTC deposits $20 of the additional fee paid by Oklahoma motorists who purchase the Choose Life Plate into the Choose Life Fund. *See* § 1104.6(A). The DHS withdraws monies from the Choose Life Fund to administer and implement §§ 1104.6(C)-(F). A copy of 47 Okla. St. § 1104.6 is attached as Exhibit B (*see* 2004 OK. ALS 504, § 6 at pp. 4-5).

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[3] The additional fee paid by those Oklahoma motorists who purchase an Adoption Creates Families Plate is required by statute to "be deposited in a revolving fund established in the State Treasury for and to be used by the [DHS] for the implementation of the Investing in Stronger Oklahoma Families Act specifically for created families." 47 Okla. St. § 1135.5(B)(22). That Act is intended "to provide assistance to guardians of children, adoptive parents and other 'created families,' to assist such guardians, adoptive parents and families to assume permanent custody of children in need of safe and permanent homes, and to enhance family preservation and the stability of these homes." 10 Okla. St. § 22.2(B). Any funding restrictions associated with the Respect Life Plate are not challenged in this lawsuit because ORC does not currently seek to provide such services.

100. Section 1104.6 provides that certain nonprofit organizations may apply to the DHS for disbursement of monies from the Choose Life Fund. Eligible organizations are defined by statute as nonprofit organizations that, among other criteria: (*a*) "counsel[] pregnant women who are committed to placing their children for adoption;" (*b*) do not charge women for services rendered; and (*c*) agree to use 60% of the monies they receive from the Choose Life Fund to provide for the material needs of pregnant women committed to placing their children for adoption and/or infants awaiting adoption placement, and 40% for adoption counseling, training, or advertising. § 1104.6(C).

101. Section 1104.6 prohibits disbursement of monies from the Choose Life Fund to organizations that are "involved or associated with any abortion activities, including counseling for or referrals to abortion clinics, providing medical abortion-related procedures, or pro-abortion advertising." § 1104.6(C)(4); *see id.* § 1104.6(D).

102. Recipients of disbursements from the Choose Life Fund must submit to an annual audit verifying that such monies were used in the manner prescribed by §§ 1104.6(C)-(E). *See* § 1104.6(F).

103. Upon information and belief, the Choose Life Fund currently has monies available for disbursement to eligible organizations.

VI. ADDITIONAL ALLEGATIONS

A. Motorist Plaintiffs' Desired Self-Expression

104. Each Motorist Plaintiff is a resident of Tulsa, Oklahoma who owns a validly-registered motor vehicle for which he or she would like to purchase a special license plate expressing support for choice in family planning.

105. None of the Motorist Plaintiffs has been successful in his or her efforts to do so.

106. Each Motorist Plaintiff went to his or her local tag agency and specifically asked to purchase a special license plate expressing support for choice in family planning.

107. Motorist Plaintiffs were notified by their local tag agencies that no such special license plate is available for purchase by Oklahoma motorists. Instead, the Motorist Plaintiffs were advised to contact the OTC Motor Vehicles Division for further information regarding the availability of a special license plate expressing support for choice in family planning.

108. Motorist Plaintiff Moskowitz subsequently contacted the OTC Motor Vehicles Division to request a special license plate expressing support for choice in family planning, but was advised that no such special license plate currently exists.

109. When Motorist Plaintiff Moskowitz inquired why she and other Oklahoma motorists are

not able to purchase a special license plate displaying this particular view about reproductive rights, she was informed that such plates can be made available only by statutory amendment.

110. Based on her conversation with a representative from the OTC Motor Vehicles Division, Motorist Plaintiff Moskowitz understands that a special license plate expressing support for choice in family planning will be made available for purchase by Oklahoma motorists *only if*: (*a*) a member of the Oklahoma Legislature agrees to sponsor a bill that would amend 47 Okla. St. §§ 1135.1-1135.6 to authorize the OTC's issuance of such a plate; *and* (*b*) the bill is approved by the appropriate Legislative committee(s); *and* (*c*) the bill is approved by the Legislature; *and* (*d*) the bill is successfully enacted into law by signature of the Governor (or by passage of the five-day waiting period).

111. Over two years ago, the Oklahoma Reproductive Health Coalition sought passage of an amendment to §§ 1135.1-1135.6 that would authorize the OTC's issuance of a special license plate expressing support for choice in family planning. Motorist Plaintiff Santee and ORC were members of the Oklahoma Reproductive Health Coalition and involved with that effort.

112. On February 3, 2003, Senator Angela Monson (D) introduced Senate Bill 548 ("SB 548"), which would have amended former § 1136 (before it was repealed and replaced by §§ 1135.1-1135.6, *see*

¶ 77 above) to authorize a new "Choice in Family Planning License Plate" (the "Family Planning Plate") effective as of November 1, 2003.

113. Specifically, SB 548 would have authorized the OTC to issue a Family Planning Plate to any person wishing to demonstrate support of choice in family planning. The Family Planning Plate would be available for purchase by Oklahoma motorists subject to an additional fee of $25, of which $20 would be deposited into a newly-created "Choice in Family Planning Revolving Fund" (the "Family Planning Fund"), and of which $5 would be deposited into the OTC Reimbursement Fund (*see* ¶ 65 above).

114. SB 548 would have further provided for an amendment to 47 Okla. St. § 1104 that would authorize the Treasurer to create the Family Planning Fund, which would then be used by the DHS to fund family planning functions and activities.

115. SB 548 was referred to the Senate Finance Committee on February 4, 2003 and remained dormant there for over a year. Upon information and belief, a bill dies if not passed during the [sic] either the first, or the second regular session after its introduction. The Oklahoma Legislature adjourned its most recent second regular session *sine die* on May 28, 2004 without acting on SB 548. Accordingly, SB 548 officially died on May 28, 2004. *See* <http://www.lsb.state.ok.us/>.

116. Upon information and belief, no action was taken on SB 548 because the Oklahoma Legislature

disagreed with the expression to be displayed on the proposed Family Planning Plate and/or did not want a Family Planning Plate available for purchase by Oklahoma motorists.

117. There is no compelling or any other governmental interest satisfied by, on the one hand, allowing the OTC to make Choose Life Plates available for purchase by Oklahoma motorists who wish [sic] express support for adoption as a preferred family planning option, and on the other hand, failing to allow the OTC to make Family Planning Plates available for purchase by Oklahoma motorists who wish to express support for choice in family planning.

118. Also on February 3, 2003 – the same day that SB 548 was introduced – Representative Clay Pope (D) introduced House Bill 1599 ("HB 1599"), which would amend what is currently § 1135.5(B) to authorize the OTC to create and issue a new Lions Club License Plate ("Lions Club Plate") to any person wishing to demonstrate support for the Lions Club of Oklahoma. The Lions Club Plate would be designed by the Lions Club and subject to an additional $15 fee.

119. In contrast to SB 548, HB 1599 was unanimously approved by the House of Representatives on March 5, 2003, unanimously approved by the Senate on April 9, 2003, and approved by the Oklahoma Governor on April 15, 2003. It became effective on November 1, 2003. *See* ¶ 70(s) above.

120. Upon information and belief, HB 1599 was promptly enacted because the Oklahoma Legislature agreed with the expression displayed on the Lions Club Plate and/or wanted a Lions Club Plate available for purchase by Oklahoma motorists.

121. There is no compelling or any other governmental interest satisfied by, on the one hand, allowing the OTC to make Lions Club Plates available for purchase by Oklahoma motorists who wish to express support for the Lions Club, and on the other hand, failing to allow the OTC to make Family Planning Plates available for purchase by Oklahoma motorists who wish to express support for choice in family planning.

122. HB 1994, which was pre-filed on January 16, 2004 by Representative Bill Mitchell (D) and enacted six months later, authorized the OTC to issue 22 new special license plates: Electric Lineman; Organ, Eye and Tissue; Color Oklahoma; Oklahoma City Memorial Marathon; Oklahoma Scenic Rivers; Fight Cancer; Animal Friendly; Northern Cherokee Nation of the Old Louisiana Territory; Fellowship of Christian Athletes; Parrothead Club; Alpha Kappa Alpha; Kappa Alpha Psi; National Pan-Hellenic Council; Girl Scouts of America Supporter; NASCAR; Amateur Radio Operator; Former Legislator; American Legion; Deputy Sheriff; Oklahoma Bicycling Coalition; Antique or Classic; and Honorary Counsul [sic].

123. Upon information and belief, HB 1994 was promptly enacted because the Oklahoma Legislature

agreed with the expression displayed on such plates and/or wanted such plates available for purchase by Oklahoma motorists.

124. There is no compelling or any other governmental interest satisfied by, on the one hand, allowing the OTC to make the special license plates identified in paragraph 122 above available for purchase by Oklahoma motorists who wish to support such causes, ideas, hobbies, institutions, entities or occupations, and on the other hand, failing to allow the OTC to make Family Planning Plates available for purchase by Oklahoma motorists who wish to express support for choice in family planning.

B. Statutory Scheme Lacks Viewpoint Neutrality

125. Through the Statutory Scheme, the Oklahoma Legislature and the Governor have created at least a nonpublic forum for private speech on special license plates. The Statutory Scheme simultaneously generates revenue for the State of Oklahoma while allowing Oklahoma motorists access to this State-created forum.

126. Upon information and belief, Oklahoma motorists paid to the OTC at least $605,000 in special license plate fees for the purchase of approximately 33,000 special license plates during the period between August 1, 2002 and July 31, 2003. Upon information and belief, updated figures for special license

plates purchased through July 31, 2004 will be available in mid-September.

127. The Statutory Scheme constitutes a prior restraint on Oklahoma motorists' exercise of their First Amendment rights. Motorists must first obtain approval from the Oklahoma Legislature and the Governor if their desired self-expression is not among those already "approved" for display in the forum. Motorists who are unsuccessful in their efforts to obtain legislative and gubernatorial "approval" and who, as a result, attempt to express themselves in the forum by altering their Official Plates are subject to misdemeanor prosecution and punishment by fine.

128. The Statutory Scheme imposes unreasonable restrictions on Oklahoma motorists' exercise of their First Amendment rights. Such restrictions have a chilling effect on the display of protected speech in the forum and do not advance any compelling or other governmental interest.

129. The Statutory Scheme allows the Oklahoma Legislature to limit access to this State-created forum only to those Oklahoma motorists of whose speech the legislators and Governor approve. Specifically, the Statutory Scheme grants the Oklahoma Legislature and Governor unbridled discretion in determining whether to amend §§ 1135.1-1135.6 to allow the OTC to issue special license plates displaying previously "unapproved" self-expression.

There are no standards governing these determinations.[4]

130. Although the Oklahoma Administrative Code provides that "[n]o special license plate will be issued which may be offensive to the general public" (Okl. Admin. Code § 710:60-3-150(d)), the Motorist Plaintiffs do not believe this provision applies to the Oklahoma Legislature's ability to amend §§ 1135.1-1135.6 to authorize the issuance of new special license plates. However, to the extent Defendants may argue or the Court may find that the Oklahoma Legislature is bound by this provision, Motorist Plaintiffs challenge § 710:60-3-150(d) on the ground that it constitutes a grant of unbridled discretion because the lack of any clear explanation of may be "offensive to the general public" allows for *ad hoc* determinations by the Oklahoma Legislature that are not viewpoint neutral.

131. The Statutory Scheme lacks any procedural safeguards against the risk of viewpoint discrimination by the Oklahoma Legislature or Governor, in determining whether to grant Oklahoma

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[4] HB 1994 directed the OTC to enter into a joint study with the Department of Public Safety for the purpose of developing a uniform basic format for Oklahoma special license plates and authorizes the OTC to implement such format as agreed to by the Department of Public Safety. *See* Exhibit B at p. 24 (referring to uncodified Section 21). Even if implemented, a uniform basic format for the configuration of self-expression by Oklahoma motorists would continue to lack standards governing which self-expression is eligible for such configuration.

motorists access to this State-created forum. Specifically, the Statutory Scheme does not contain any time limit within which the Oklahoma Legislature must determine whether to amend §§ 1135.1-1135.6 to authorize issuance special license plates displaying previously unauthorized self-expression, and there is no provision for prompt judicial review of decisions refusing such access.

132. The risk of viewpoint discrimination is exacerbated under the Statutory Scheme because it is exceedingly unlikely that Oklahoma legislators or the Governor would support legislation authorizing the issuance of new special license plates for the display of self-expression deemed unpopular among the Oklahoma electorate.

C. Choose Life Funding Restrictions Infringe Free Speech

133. Upon information and belief, Oklahoma motorists have already purchased Choose Life Plates. As a result, monies should already have been deposited by the OTC into the Choose Life Fund maintained by the Treasurer for disbursement to eligible organizations by the DHS.

134. ORC would like to apply for and receive disbursements from the Choose Life Fund in order to (*a*) create a program that would provide direct support to pregnant women who have decided that adoption is the appropriate option given their circumstances, and

(*b*) support counseling and associated training about adoption as a family planning option.

135. However, ORC fails to satisfy the criteria for funding eligibility set forth in § 1104.6.

136. ORC is ineligible to receive disbursements from the Choose Life Fund because ORC is "involved or associated with abortion activities." §§ 1104.6(C)(4) and (D). Specifically, ORC:

- provides telephone counseling and referrals for counseling on all reproductive options available to women with unplanned pregnancies – including, parenting, adopting, foster care and abortion;
- maintains a Roe Fund to help cover the costs (including child care, travel, overnight accommodations and medical care) incurred by impoverished women who have decided that abortion is the appropriate option in their circumstances;
- participates in non-violent demonstrations outside health facilities providing abortion services;
- sponsors periodic worship, fellowship and educational gatherings for community members who support choice in family planning; and
- promotes the Clergy for Choice Network of the Religious Coalition for Reproductive Choice, which is a national registry of clergy of all faiths who believe that

> family planning encompasses a wide range of issues, including access to safe, legal and affordable adoption and abortion services.

137. ORC would not use any disbursements received from the Choose Life Fund to fund these or any other activities involved or associated with abortion.

138. Each of these activities involves the exercise by ORC of constitutionally-protected speech regarding choice in family planning.

139. Aside from its involvement and/or association with the types of activities described in ¶ 136 above, ORC otherwise satisfies all of the criteria for funding eligibility set forth in the Choose Life Statute.

140. Section 1104.6 unduly interferes with and discourages constitutionally-protected speech activities by denying a benefit to organizations that engage in such activities. Specifically, §§ 1104.6(C)(4) and (D) impermissibly render ORC ineligible to receive disbursements from the Choose Life Fund – notwithstanding that ORC would use those disbursements to fund only activities that are not involved or associated with abortion – solely because the Oklahoma Legislature disagrees with ORC's speech regarding choice in family planning.

* * *

FIRST CLAIM FOR RELIEF
(Motorist Plaintiffs – Freedom of Speech)

141. The allegations of ¶¶ 1 through 140 above are incorporated as though fully set forth herein.

142. On its face, the Statutory Scheme violates the First and Fourteenth Amendments to the United States Constitution and 42 U.S.C § 1983.

143. The Statutory Scheme is presumptively unconstitutional because it both grants the Oklahoma Legislature and Governor unbridled discretion and lacks viewpoint neutral standards for determining which Oklahoma motorists will be permitted access to a State-created speech forum. With these faults, every application of the Statutory Scheme creates an impermissible risk that viewpoint discrimination will lead to suppression of protected expression.

144. The Statutory Scheme is presumptively unconstitutional because it lacks adequate procedural safeguards against decision-making delay and prompt judicial review. With these faults, every application of the Statutory Scheme creates an impermissible risk that viewpoint discrimination will lead to suppression of protected expression.

145. The restrictions imposed by the Statutory Scheme are not narrowly drawn to achieve a compelling or any other governmental interest.

SECOND CLAIM FOR RELIEF
(Motorist Plaintiffs – Freedom of Speech)

146. The allegations of ¶¶ 1 through 145 above, are incorporated as though fully set forth herein.

147. As applied to the Motorist Plaintiffs, the Statutory Scheme violates the First and Fourteenth Amendments to the United States Constitution and 42 U.S.C § 1983 because the Oklahoma Legislature engaged in viewpoint discrimination when it authorized the expression of only certain views about reproductive rights in a State-created speech forum.

148. As applied to the Motorist Plaintiffs, the Statutory Scheme violates the First and Fourteenth Amendments to the United States Constitution and 42 U.S.C § 1983 because the Oklahoma Legislature engaged in viewpoint discrimination by failing to allow Motorist Plaintiffs to express their view about reproductive fights in a State-created speech forum.

149. The Statutory Scheme is not narrowly drawn to achieve a compelling or any other governmental interest justifying the Oklahoma Legislature's failure to amend 47 Okla. St. §§ 1135.1-1135.6 to allow the OTC to issue Family Planning Plates.

THIRD CLAM FOR RELIEF
(Motorists Plaintiffs – Due Process)

150. The allegations of ¶¶ 1 through 149 above are incorporated as though fully set forth herein.

151. The Statutory Scheme violates the Due Process protection accorded by the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983 because it conditions access of Oklahoma motorists to a State-created speech forum on a statutory amendment by the Oklahoma Legislature and Governor authorizing the desired self-expression.

152. The Statutory Scheme is not narrowly drawn to achieve a compelling or any other governmental interest justifying this undue burden on Oklahoma motorists' First Amendment rights.

153. Moreover, even if this burden were sufficiently justified, the Statutory Scheme also violates Due Process because it does not adequately notify Oklahoma motorists of what, if any, additional self-expression would be permitted or prohibited in a State-created speech forum.

FOURTH CLAIM FOR RELIEF
(Motorists Plaintiffs – Equal Protection)

154. The allegations of ¶¶ 1 through 153 above are incorporated as though fully set forth herein.

155. The Statutory Scheme violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and 42 U.S.C § 1983 because it allows for, and in fact has resulted in, impermissible viewpoint discrimination among otherwise similarly-situated Oklahoma motorists in permitting access to a State-created speech forum.

156. The Statutory Scheme is not narrowly drawn to achieve a compelling or any other governmental interest justifying a distinction between allowing certain Oklahoma motorists to express themselves on special license plates and refusing to allow other Oklahoma motorists to do the same.

FIFTH CLAIM FOR RELIEF
(Organizational Plaintiff – Freedom of Speech)

157. The allegations of ¶¶ 1 through 156 above are incorporated as though fully set forth herein.

158. 47 Okla. St. § 1104.6 violates the First and Fourteenth Amendments to the United States Constitution and 42 U.S.C § 1983 by impermissibly denying ORC the ability to apply for and receive money from the Choose Life Fund solely on the basis of ORC's involvement and association – through other funding sources – with abortion activities.

159. 47 Okla. St. § 1104.6 is not narrowly drawn to achieve a compelling or any other governmental interest justifying ORC's ineligibility to receive Choose Life Fund disbursements based on the expression of constitutionally-protected speech.

SIXTH CLAIM FOR RELIEF
(Organizational Plaintiff – Equal Protection)

160. The allegations of ¶¶ 1 through 159 above are incorporated as though fully set forth herein.

161. 47 Okl. St. § 1104.6 violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and 42 U.S.C § 1983 because it allows for, and in fact has resulted in, impermissible discrimination among otherwise similarly-situated non-profit organizations regarding their eligibility for disbursements from the Choose Life Fund.

162. 47 Okla. St. § 1104.6 is not narrowly drawn to achieve a compelling or any other governmental interest justifying a distinction between organizations that are, eligible to receive money from the Choose Life Fund and those that are rendered ineligible based on the exercise of constitutionally-protected rights to freedom of speech.

* * *

REQUESTS FOR RELIEF

163. Plaintiffs respectfully request that the Court grant the following relief:

164. Declare that the Statutory Scheme is unconstitutional; *and* enjoin the Defendants, their agents, and their successors in office from implementing or further enforcing all provisions of 47 Okla. St. §§ 1135.1-1135.6 (with the exceptions of §§ 1135.1(B)(3), 1135.1(B)(5) & 1135.4); *or, in the alternative*,

165. Declare that allowing a special license plate expressing only certain views about reproductive rights but not a special license plate expressing a

different view is unconstitutional; *and* enjoin the Defendants, their agents, and their successors in office from implementing or further enforcing 47 Okla. St. §§ 1135.5(B)(22) & 1135.5(B)(23); *and*

166. Declare that prohibiting the distribution of government funds raised by sales of the Choose Life Plate based on constitutionally-protected speech relating to a woman's exercise of choice in family planning is unconstitutional; *and* enjoin the Defendants, their agents, and their successors in office from implementing or further enforcing subsections C(4) and D of 47 Okla. St. § 1104.6; *and* sever subsections C(4) and D from the remainder of 47 O. S. § 1104.6; *and*

167. Award Plaintiffs their costs and reasonable attorneys' fees pursuant to 42 U.S.C. § 1988; *and*

168. Grant such other relief as the Court may deem just and proper.

Respectfully submitted,

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